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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Mobile County Racing Commission
- Racing

A computerized machine that replays actual historical races and requires a player to exercise a significant degree of skill in making a pari-mutuel wager on the outcome of the race is permissible in Mobile County if it has been approved by the Mobile County Racing Commission and if the use is otherwise legally permitted under Alabama's lottery and gambling laws.

Dear Mr. Box:

This opinion of the Attorney General is issued in response to your request on behalf of the Mobile County Racing Commission.

QUESTION

Whether a computerized machine, which replays actual historical races and which allows a player to make a pari-mutuel wager, is permissible in Mobile County.

FACTS AND ANALYSIS

In your letter of request, you provide the following facts:

Instant Racing is a computerized machine developed by RaceTech LLC that stores tens of thousands of digitized races, instantaneously available for on-demand transmission The races are actual horse and dog races that have been run in the past. The machine is married to pari-mutuel wagering, processed through the track's existing totalizator system. Instant Racing utilizes the same basic handicapping information typically found at a racetrack. The information is built into the system and is immediately available to the player in a graphical, electronic format. It is carefully presented in a way to keep a player from being able to use the data to identify an upcoming race.

Pari-mutuel wagering is permitted in Mobile County pursuant to the provisions of Act No. 86-545, as amended by Act No. 95-421. These local laws provide, in pertinent part:

(b)(1) Any licensee conducting race meetings under this act may:

a. Receive broadcasts of horse races and dog races conducted outside of Mobile County, and allow all form of pari-mutuel wagering on those races.

* * *

(2) For the purposes of this section, the term "broadcast" means the broadcast, transmission or exhibition in *any medium or*

manner by means which may include, but are limited to, community antenna systems which receive and retransmit television or radio signals by wire, cable or otherwise to television or radio sets and cable origination networks or programmers which transmit programming to community antenna television or closed-circuit systems by wire, cable, satellite, or otherwise.

1995 Ala. Acts No. 95-421, § 1, at 916-17 (emphasis added).

The statute clearly provides that a licensee under the Act may “receive broadcasts of horse races and dog races conducted outside of Mobile County, and allow all forms of pari-mutuel wagering on those races.” *Id.* The term “broadcast” includes the “exhibition in any medium or manner,” and the activities you described in your letter fit within this expansive definition of the term “broadcast.”

Under well-established provisions of Alabama law, pari-mutuel wagering is permissible in Alabama only because the Alabama Supreme Court has concluded that it is an activity that involves skill. In *Opinion of the Justices No. 205*, for example, the Alabama Supreme Court was asked by the Alabama House of Representatives whether bills authorizing “dog racing with a pari-mutuel wagering system of wagering” constitute a lottery under Alabama’s Constitution. The Court reasoned that:

A significant degree of skill is involved in picking the winning dog, such factors as weight, paternity, trainer, position, past record, wet or dry track, etc. all must be considered The fact that the pari-mutuel system of betting is used is not determinative of the winner, but the amount of the purse.

251 So. 2d 751, 753 (Ala. 1971). The Court then concluded that pari-mutuel wagering did not constitute a lottery. *Id.* at 754. Information supplied to this Office by RaceTech states that “[t]he handicapping information included in the RaceTech Instant Racing System is identical to the handicapping information that was available on the day of the

race.” If the information provided by RaceTech includes the information necessary for a bettor to make his wager based on the elements of skill discussed in *Opinion of the Justices No. 205*, then the system may not be a lottery under the law.

If the information provided by RaceTech to bettors is sufficient to require a person to exercise “a significant degree of skill . . . in picking the winning dog,” it is the opinion of this Office that the Mobile County Racing Commission may allow licensees to offer pari-mutuel betting on this type of machine, provided the use is otherwise legally permitted under Alabama’s lottery and gambling laws.

CONCLUSION

If a computerized machine that replays actual historical races requires a player to exercise a significant degree of skill to make a pari-mutuel wager on the outcome of the race, use of such machine is permissible in Mobile County if it has been approved by the Mobile County Racing Commission and if the use is otherwise legally permitted under Alabama’s lottery and gambling laws.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Troy King of my staff.

Sincerely,

BILL PRYOR
Attorney General

By:

A handwritten signature in black ink, appearing to read "Carol Jean Smith". The signature is fluid and cursive, with the first name "Carol" being more prominent.

CAROL JEAN SMITH
Chief, Opinions Division

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